

(2013) 12 P&H CK 0160
In the Punjab And Haryana At Chandigarh
Case No : C.R No. 455 of 2013 (O&M)

Tirlok Chand

APPELLANT

Vs

Suresh Kumar

RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Citation : (2013) 12 P&H CK 0160

Hon'ble Judges : Rakesh Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This is tenant's revision petition challenging the order dated 1.3.2012 of the Rent Controller, Malout whereby eviction of the petitioner has been ordered on the ground of personal bona fide necessity/requirement of the respondent-landlord. Further challenge has been laid to the judgment dated 23.11.2012 of the Appellate Authority dismissing his appeal against the aforesaid order of eviction passed by the Rent Controller, Malout. While setting up personal bona fide necessity/requirement, the respondent-landlord pleaded that he requires the shop in dispute for his use and occupation as he is an Advocate by profession and has no office to attend his clients after and before Court hours and to study cases and he was not occupying any such shop/office in the urban area of Gidderbaha or any other shop or building for the purpose of setting up of his office. Further, he pleaded that he has not got vacated any such shop or building without sufficient cause after the commencement of the Act in the vicinity of the urban area. It was further stated that he wanted to build/construct/start his office in the disputed shop. Thus, the petitioner be evicted from the demised shop.

2. The petitioner contested the eviction petition denying the averments.

3. While allowing the eviction petition on the ground of bona fide necessity, the Rent Controller held that the respondent-landlord has proved that he has no

other space available to him to open his office and the petitioner has not been able to bring on record if the respondent was having sufficient alternative suitable accommodation to set up his office as an Advocate. The reference may be made to the following paragraphs of the judgment of the Rent Controller.

Onus to prove this issue was upon the petitioner. Petitioner is alleging that he is a practising Advocate at Gidderbaha and that he necessarily requires the demised premises to open his office. The petitioner has led the evidence that he has got no other space available to him to open his office. Respondent is alleging that this area has lot of noise and this place is not suitable for the petitioner to open an office. Moreover, it is alleged that this place is far away from the residence of the petitioner and that no one will set up one's office at this place. The respondent has not been able to bring on record if the petitioner is having sufficient alternative suitable accommodation to set up his office as an Advocate. He also has not been able to point if the petitioner is also having sufficient accommodation to open his office at his residence. Rather it has come in to the evidence in the testimony of respondent and none other that the petitioner is living in a joint family in a house having dimensions 20" x 70" feet or 25" x 70". He also has admitted that the petitioner is a practicing Advocate at Gidderbaha. In these circumstances, it has to be pointed out that the Hon"ble Apex Court of India in case Joginder Pal Vs. Naval Kishore Behal, has held, "Landlord required non residential premises for the office of his son who is chartered accountant-Need is bona fide".

Further Hon"ble Apex Court of India in case R.C. Tamrakar and Another Vs. Nidi Lekha, has held that, "It is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement". In another citation Savitri Devi Dutta Vs. Smt. Shakuntla Khullar (Principal), Government College, it has been held that, "Sufficiency of accommodation already in possession of landlord and lack of bona fide need are no grounds to decline the relief u/s 13-A." In another case in case Kay Iron Works (P) Ltd. Vs. Shri Molar Mal, Timber Merchant, through L.Rs., the Hon"ble Punjab & Haryana High Court has held that, "Tenant cannot dictate terms to the landlord regarding sufficiency or insufficiency of the premises, which is already in occupation of the landlord and this fact can be judged from the view point of the landlord and not from the tenant's view point.

4. Appeal filed on behalf of the petitioner against the order of eviction of the Rent Controller was also dismissed.

5. While affirming the findings of the Rent Controller, the Appellate Authority has observed as under in the impugned order:

Although, appellant has taken a plea that the shop, in dispute does not suit the respondent to open his office as it is quite noisy. However, in cross-examination, respondent was asked a specific question about the distance of shop from is residential house and in reply, it has been said that shop, in dispute, is at a

distance of 150/200 Karams from his home and distance has not been confronted by the appellant during the cross-examination of Suresh Kumar respondent. It means, shop, in dispute is very near to the house of the respondent Suresh Kumar and it has been admitted by the appellant in his cross-examination that petitioner is living in a joint family in house having dimension 20 x 70 feet or 25 feet x 70 feet. He has also admitted that respondent Suresh Kumar is practicing advocate at Gidderbaha. So, it means, residence/accommodation is not sufficient for the respondent Suresh Kumar to spare a space to set up an office to run from his residence. Moreover, tenant cannot dictate the terms to the landlord regarding sufficiency or insufficiency of the premises, which is already in occupation of the landlord and this fact can be judged from the view point of the landlord and not from the tenant's view point. Same is the view of the learned Rent Controller, which has been taken by him, while relying on various judgments, titled as follows:-

Joginder Pal Vs. Naval Kishore Behal, ,

R.C. Tamrakar and Another Vs. Nidi Lekha, ,

Savitri Devi Dutta Vs. Smt. Shakuntla Khullar (Principal), Government College, and

Kay Iron Works (P) Ltd. Vs. Shri Molar Mal, Timber Merchant, through L.Rs., .

6. Still not satisfied, the tenant has approached this Court challenging the impugned judgments of the Courts below.

7. I have heard learned counsel for the petitioner and perused the impugned orders of eviction passed against the petitioner.

8. Both the Courts below on appreciation of evidence have recorded a concurrent finding of fact that requirement of the respondent landlord is bona fide. The petitioner has failed to point out that the respondent was having any other suitable and alternative accommodation to open his office as an Advocate. Even before this Court, learned counsel for the petitioner was unable to point out any evidence to controvert the findings so recorded by the Courts below. Though an argument has been raised before this Court that the demised premises are not suitable for the petitioner to open the office, however, it is the choice of the respondent-landlord with regard to the use of demised premises and the tenant cannot dictate his terms with regard to the suitability of the accommodation. In view thereof, this Court finds no merit in this petition.

Dismissed.